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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 564

NATIONAL CAN CORPORATION,
Appellant,

v.

STATE TAX COMMISSION OF MARYLAND,
Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS

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MOTION TO DISMISS

Appellee, pursuant to Rule 16 of the Revised Rules of this Court, moves to dismiss this appeal on the ground that no substantial federal question is presented.

STATEMENT

The sole question presented by this appeal is the validity of a Maryland statute which provides for the separate assessment of personalty and realty, and provides a different method of valuing each type of property. Based upon a legislative finding that the "natural and inherent differences between real and personal property" require and justify the different treatment afforded each such

class, the statute directs that realty be valued for tax purposes at "current value less an allowance for inflation," if found to exist, but that personalty be valued at "current value without any allowance for inflation." The Act was made retroactive for a one year period so as to ratify assessments for the prior year, including the assessment contested by the appellant.

Although stated in somewhat involved terms in the appellant's brief, the questions raised by this appeal are:

(1) Does the Equal Protection Clause require the tax burden to be the same on personalty and realty of the same current value?

(2) Is the term "inflation" so vague a standard as to violate the Due Process Clause and, if so, does appellant have standing to raise that question?

(3) Does a legislative validation of a prior assessment which has the effect of one year's retroactivity violate the Due Process Clause?

We submit that prior decisions of this Court render such questions entirely unsubstantial.

STATEMENT OF THE CASE

Prior to *Sears, Roebuck & Co. v. State Tax Comm.*, 214 Md. 550 (decided November 22, 1957), it had been the long-standing practice of the Maryland Tax Commission to value personal property without regard to inflation but to consider inflation in the valuation of real property. As was testified by the Secretary of that Commission (E. 14-15), it was felt that inflation had a greater impact on real property, which is held in most cases for long periods of time, than it did on personal property, such as inventories which are constantly being turned over. For example, although

it is true that inflation causes a merchant to pay more for his inventory in 1959 than he would have in 1939, it is no hardship for him to be taxed on that inflated wholesale value since he himself is constantly turning over this inventory and selling it to the public at an equally or even more inflated retail price. It is quite another thing to tell a homeowner who bought his house in 1939 that he must pay taxes based upon inflated 1959 values even though he has no intention of selling it.

When this difference in treatment was first attacked in the *Sears* case, the Maryland Court of Appeals held that since the Maryland law *as it then existed* required both real and personal property to be assessed on the same basis, there was no legislative foundation for the practice of the Commission. It therefore ordered all personal property assessments to be reduced by the same inflation factor as that applied to realty.

The *Sears* decision dealt such a body blow to the entire revenue structure of the State and was so contrary to established practice that the General Assembly, at the very next legislative session, some three months after the *Sears* decision, enacted the statute now under attack. That statute, Chapter 73 of the Acts of 1958, contained a series of legislative determinations which may be summarized as follows:

1. That the *Sears* case held that real and personal property had been "classified alike by the General Assembly for assessment purposes", and that therefore the same allowance for inflation had to be given to both;

2. That the General Assembly, in the exercise of the power to classify given by Article 15 of the Maryland

Declaration of Rights, now intended separately to classify real and personal property so that an allowance for inflation might properly be made in real property assessments only;

3. That "the natural and inherent differences between real and personal property . . . require and justify the making of an allowance for inflation in respect to real estate assessments" only;

4. That unless remedial legislation were enacted "and made retroactive to January 1, 1957", the State would lose substantial revenue and the small number of taxpayers who contested their 1957 assessment would be given "undue advantage" over the great majority of taxpayers who had paid their taxes without protest and thus could not take advantage of the *Sears* decision for that year.

The statute then separately classified real and personal property and re-established the prior practice of the Tax Commission by providing not merely a statutory basis for it, but by issuing a statutory mandate that inflation should be taken into account in the valuation of real property only. For the reasons set out above, the statute (which was enacted on April 4, 1958), was made retroactive to January 1, 1957. It was expressly provided, however, that "no person, firm or corporation shall be subject to criminal prosecution or criminal penalties" because of any violation which may have occurred prior to the passage of the Act.

ARGUMENT

QUESTION NO. 1

The Equal Protection Clause Does Not Require That Personalty and Realty Be Subjected To The Same Tax Burden.

The effect of Chapter 73 is, of course, to subject personal property to a greater tax burden than real property of comparable current value. However, it is well settled that the equal protection clause "imposes no iron rule of equality" with respect to the taxation of different classes of property and is satisfied if equality is present within each such class. *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522; *Kentucky Railroad Tax Cases*, 115 U.S. 321; *Magoun v. Illinois Trust & Savings Bank*, 170 U.S. 283; *Michigan Central R.R. Co. v. Powers*, 201 U.S. 245; *Hart Refineries v. Harmon*, 278 U.S. 499.

As this Court pointed out in *Allied Stores of Ohio, Inc. v. Bowers* (*supra*, 358 U.S. at 528-529), the fact that "a statute may discriminate in favor of a certain class does not render it arbitrary if the discrimination is found upon a reasonable distinction, or difference in state policy . . . [and] a classification, though discriminatory, is not arbitrary nor violative of the Equal Protection Clause of the Fourteenth Amendment if any state of facts reasonably can be conceived that would sustain it."

Clearly a "reasonable distinction" can be drawn between real and personal property; clearly the difference in impact which inflation has on each such class is sufficient to found a "difference in state policy". In fact this Court has repeatedly stated that under the equal protection clause real property and personal property may be differently taxed. *Bell's Gap R. Co. v. Pennsylvania*, 134 U.S. 232, 237; *Home Ins. Co. v. New York*, 134 U.S. 594, 606; *American Sugar Refining Co. v. Louisiana*, 179 U.S. 89, 94; *Southwestern*

Oil Co. v. Texas, 217 U.S. 114, 122; *Stebbins v. Riley*, 268 U.S. 137, 142; *Ohio Oil Co. v. Conway*, 281 U.S. 146, 149.

We submit that the fact that real property is valued differently from personalty in Maryland raises no substantial federal question.

QUESTIONS NOS. 2 AND 3

Appellant Has No Standing To Raise the Question of the Alleged Vagueness of the Term "Inflation".

Appellant, arguing that the term "inflation" gives "uncontrolled discretion" to assessors to grant "a virtually unlimited allowance in reducing real property valuations", contends that the statute does not contain standards or guides "sufficiently definite" to satisfy the federal due process clause. If we overlook the fact that Chapter 73 merely re-established a long-standing and well-defined administrative practice, and even if we assume that the Maryland courts would be powerless to prevent any arbitrary action by the assessors, the most that can be said for the appellant's argument is that possibly some *real property owners* might be discriminated against *vis a vis* other *real property owners* since one assessor might give a greater inflation allowance than some other assessor. However, the appellant clearly has no standing to raise the question.

The appellant, a personal property holder, cannot complain that a different tax treatment is given to real property than is given to personalty. Since appellant is concededly treated the same as all other holders of personal property, the requirement of equity *within the class* has been met (see discussion, *supra*). As the validity of the appellant's personal property assessment thus does not depend upon the validity of any assessment of real prop-

erty, and since any possible discrimination would be between the members of a different class, i.e., the owners of real property, the appellant is unaffected by the provisions of Chapter 73 relating to the assessment of real property, including those which give an allowance for "inflation". Appellant therefore has no standing to maintain a suit to upset them. *Roberts & Schaefer Co. v. Emmerson*, 271 U.S. 50, 54.

As the appellant is without standing to raise the second and third issues presented by its appeal, it necessarily follows that no substantial federal question is presented.

QUESTION NO. 4

The One Year Retroactivity Involved in Chapter 73 Does Not Violate the Due Process Clause of the Fourteenth Amendment.

The assessment from which the appellant appeals is for the tax year January 1-December 31, 1957. It is based upon the average value of inventory held by the taxpayer in 1956. After the decision in the *Sears* case on November 22, 1957, the Maryland Legislature, on April 4, 1958, enacted Chapter 73 and made it effective as of January 1, 1957, so as to ratify the assessments outstanding for the tax year 1957, including that of the appellant. There can be no question as to the right of the State of Maryland retroactively to ratify the outstanding assessments for the prior tax year. *Baltimore v. Ulman*, 79 Md. 469, aff'd 165 U.S. 719; *Leser v. Wagner*, 120 Md. 671, aff'd 239 U.S. 207; *United States v. Heinszen & Co.*, 206 U.S. 370; *Tiaco v. Forbes*, 228 U.S. 549; *Rafferty v. Smith B. & Co.*, 257 U.S. 226; *Hodges v. Snyder*, 261 U.S. 600; *Kentucky Union Co. v. Kentucky*, 219 U.S. 140 and see *Welch v. Henry*, 305 U.S. 134.

The retroactivity of the statute thus presents no substantial federal question.

CONCLUSION

In enacting Chapter 73, the General Assembly of Maryland afforded a statutory basis for a long-standing practice of the State Tax Commission. In order to prevent a serious loss of revenue, and in an effort to treat all taxpayers equally, the statute ratified outstanding assessments for the year immediately preceding its passage. Under the statute, real property, but not personal property, is valued for tax purposes so as to take inflation into account. These are matters of state policy which are well within the permissible limits announced by numerous decisions of this Court.

It is, therefore, respectfully submitted that this appeal should be dismissed as presenting no substantial federal question.

Respectfully submitted,

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